

2014 FEB 19 AM 9: 22

THE CELA

DISMISSAL AND CASE CLOSURE UNDER THE ENFORCEMENT PRIORITY SYSTEM

**CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM**

**ENFORCEMENT PRIORITY
SYSTEM**

SYSTEM

Under the Enforcement Priority System (“EPS”), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), and developments of the law. It is the Commission’s policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MUR 6595 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.

The EPS rating information is as follows:
Filed: July 9, 2012.

Complaint Filed: June 18, 2012. Response

1 Complainant Michael J. Barkley² alleges that the Committee erected campaign signs in
2 numerous "high-traffic" locations throughout California's 10th congressional district, which
3 he contends helped Denham win California's 2012 primary election. Compl. at 1. The signs
4 allegedly were displayed on commercial property, and Barkley contends that the advertising
5 space provided by these commercial property owners gave something of value to the
6 Committee. *Id.* However, Barkley asserts that the Committee did not report any
7 disbursements to the owners of the property where the signs were placed. *Id.* at 1-2. Nor did
8 the Committee disclose the "fair market value" of the advertising space as in-kind
9 contributions from the property owners to the Committee. *Id.* at 1.

10 Barkley includes by reference 42 pages of photographs of approximately 35 Denham
11 campaign signs, which are posted on his website at <http://www.mjbarkl.com/denham2.htm>.
12 Compl. at 1. The signs include the message "Local Farmer, Jeff Denham, U.S.
13 Representative," with a disclaimer stating "[p]aid for and authorized by Denham for
14 Congress." *Id.* The signs appear to have been posted in various residential, commercial, and
15 industrial areas. *Id.* at 1-3. According to Barkley, the Denham campaign signs were displayed
16 for four to eight weeks, and might have resulted in as much as \$340,000 in unreported
17 contributions.³ *Id.*

18 The Committee responds that, during the campaign, it routinely provided campaign
19 signs to its volunteers upon request. Resp. at 1. However, Committee agents and employees
20 did not direct volunteers to place signs in certain locations, nor did the Committee keep

² Denham for Congress is the principal campaign committee of Congressman Jeff Denham. Barkley was one of Denham's opponents in the June 5, 2012 primary election.

³ Barkley estimated the value based on commercial rates for outdoor advertising displays that are calculated according to the display size, type, and number of "eyes" that will see the display. Compl. at 2.

14044354062

1 records of where the signs were ultimately placed. *Id.* The Committee argues that, under the
2 Act and Commission regulations, the value of services provided by uncompensated campaign
3 volunteers is not a contribution to the campaign, even when volunteers provide their personal
4 residence for campaign-related activity. *Id.* Therefore, the Committee asserts that no
5 contributions resulted when its volunteers posted signs on their personal property, regardless
6 of the alleged value that may be calculated by the number of “people pass[ing] by the location
7 in a given day” and viewing the signs. *Id.*

8 The Committee further denies that it directed its volunteers to place signs on corporate
9 property and suggests that, if any signs were placed on corporate property, the volunteers may
10 have acted on their own initiative. Resp. at 2. The Committee also claims that it is unaware of
11 any corporations that agreed to place the Committee’s signs on their property, and asserts that
12 Barkley’s photographs disclose other candidates’ signs posted in the same locations. *Id.* To
13 the extent that its campaign signs were displayed on corporate property, the Committee argues
14 that no contribution resulted because the signs were allegedly placed without its knowledge
15 and without the corporations’ consent. *Id.*

16 The Act and Commission regulations define “contribution” as any “gift, subscription,
17 loan . . . or anything of value made by any person for the purpose of influencing any election
18 for Federal office.” 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a); *see also* 2 U.S.C.
19 § 441b(b)(2). “Anything of value” includes all in-kind contributions, including the provision
20 of goods or services without charge or at a charge that is less than the usual and normal charge.
21 11 C.F.R. 100.52(d)(1). Here, the Committee allegedly received something of value when its
22 campaign signs were displayed on commercial property, including corporate property, without
23 charge.

14044354063

1 The Act limits the amount any person may contribute to a candidate with respect to any
2 election for Federal office.⁴ 2 U.S.C. § 441a(a)(1)(A); *see also* 11 C.F.R. § 110.1(b). It also
3 prohibits corporations from making contributions in connection with federal elections.
4 2 U.S.C. § 441b(a); *see also* 11 C.F.R. § 114.2(b)(1). The Act further prohibits candidates and
5 their campaign committees from knowingly accepting any contribution that is in violation of
6 the applicable contribution limits, and from knowingly accepting or receiving corporate
7 contributions. 2 U.S.C. §§ 441a(f), 441b(a); *see also* 11 C.F.R. §§ 110.9, 114.2(d).
8 Candidates' campaign committees also must report the receipt of all contributions, including
9 in-kind contributions, and any other receipts. 2 U.S.C. § 434(b)(2); *see also* 11 C.F.R.
10 § 104.3(a)(3).

11 The Committee acknowledges that it distributed campaign signs to its volunteers and
12 that the volunteers may have placed signs on corporate property. The record, however,
13 indicates that the Committee gave little or no guidance to its volunteers as to where to place its
14 campaign signs. There is no indication that the Committee instructed its volunteers to place
15 campaign signs in any location, or that it asked any person to place campaign signs on their
16 property.

17 Based on the difficulty of ascertaining the scope of the potential violations, coupled
18 with the Committee's response concerning its lack of instruction for the placement of its signs,
19 and in view of the available Commission resources, the Office of General Counsel
20 recommends that the Commission exercise its prosecutorial discretion, pursuant to *Heckler v.*
21 *Chaney*, 470 U.S. 821 (1985), to dismiss this matter. Additionally, the Office of General

⁴ Committee signs may have been placed on commercial property owned by persons other than corporations including, *inter alia*, unincorporated associations, partnerships, and limited liability companies.

Counsel recommends that the Commission approve the attached Factual and Legal Analysis and the appropriate letters, and close the file.


RECOMMENDATIONS

1. Dismiss the allegations that Denham for Congress and David Bauer in his official capacity as treasurer violated the Federal Election Campaign Act of 1971, as amended, and Commission regulations;
2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
3. Close the file.


General Counsel

2/19/14
Date

BY:



Gregory R. Baker
Deputy General Counsel



Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Ruth Heilizer
Attorney
Complaints Examination
& Legal Administration